

2016 (6) CTC 673

IN THE HIGH COURT OF MADRAS

Sanjay Kishan Kaul, C.J. & R. Mahadevan, J.

O.S.A. Nos.281 & 319 of 2009 & O.S.A. No.7 of 2010 & M.P. No.1 of 2014

23.11.2016

Al Rostamani International Exchange, rep. by its Head International Operations, Mr. V.V. Subramaniam, P.O. Box No.10072, Dubai, United Arab Emirates

.....*Appellant*

Vs.

The Official Liquidator, High Court, Madras as the Liquidator of M/s. SIV Industries Limited (in Liquidation), Kuralagam, 1st Floor, Esplanade, Chennai-600 008. 2. Fairdeal Supplies Private Limited, rep. by its Director, Mahesh B. Gor, 4, BBD Bag (East), 5 Stephen House, 1st Floor, Kolkata-700 001. 3. Power Engineering International FZCO, P.O. Box No.261851, Jebel Ali, Dubai, UAE. 4. Kochupillai Thulasi Das, Passport No.Z1388507, "Sukritham" 20/10-2, CIT Road, Killippalayam, Karamana, Trivandrum District-695 002, Kerala. 5. Ray Divakar, Passport No.E3754060 S/o. Kumaran Divakaran, Konnisseri, Kandathil, Kaithavana, Alleppey, Kerala. 6. Santhakumariamamma Thulasi Das, "Sukritham" 20/10-2, CIT Road, Killippalam, Karamana, Trivandrum District-695 002, Kerala. [R3 to R6 impleaded as party Respondents vide Order of this Court dated 26.10.2009 made in M.P. No.2 of 2009]. 7. Asset Reconstruction Company (India) Limited, rep. by its Asst. Vice-President, The Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar (West), Mumbai-400 028 [R7 impleaded as per the Order of this Court dated 30.3.2012 made in M.P. No.1 of 2011] [Respondents in O.S.A. No.281 of 2009] 1. The Official Liquidator, High Court, Madras as the Liquidator of SIV Industries Limited (in Liquidation), Kuralagam, 1st Floor, Esplanade, Chennai-600 008. 2. Fairdeal Supplies Private Limited, rep. by its Director, Mahesh B. Gor, 4, BBD Bag (East), 5, Stephen House, 1st Floor, Kolkata-700 001. 3. The Commissioner of Police, Chennai District, Egmore, Chennai-8 [Respondents in O.S.A. No.319 of 2009] 1. Indian Bank, Asst. Recovery Management Branch, rep. by its Chief Manager, Mr. P. Andavan, 31, Veriety Hall Road, Coimbatore-641 001. 2. The Official Liquidator, High Court, Madras as the Liquidator of SIV Industries Limited (In Liquidation) [Respondents in O.S.A. No.7 of 2010]

.....*Respondents*

Negotiable Instruments Act, 1881 (26 of 1881), Sections 2(d), 9 & 58 — Unlawful Instrument — Holder in due course — Application of Section 58 — Auction sale of Company property — Demand Drafts issued in favour of Official Liquidator — Cheques issued in favour of Appellant, an International Exchange in Abu Dhabi for obtaining said Demand Drafts, dishonoured — Official Liquidator at time of receipt of Demand Drafts, not aware of dishonour or of alleged deceit by R2 (successful bidder) — Consideration for accepting Demand Draft by Official Liquidator was the permission to participate in Auction and in case of successful bidding and payment, promise to handover possession of property — Official Liquidator, 'holder in due course' as contemplated in Section 9, against whom Section 58, held, would not be applicable.

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Facts : SIV Industries directed to be wound up by Company Court. Properties of Company bought to sale by Official Liquidator. Bid of Third party purchaser, one Jalal Nasar, confirmed initially. Order of Company Court challenged before Division Bench. As Jalal Nasar failed to deposit EMD before scheduled date, R2, the second highest bidder was directed by High Court to deposit the entire EMD amount of ₹23.6 crores. R2 entered into an Assignment Agreement with M/s Power Engineering International Company (PEIC). PEIC obtained Demand Drafts from Appellant, stationed at Dubai, in favour of Official Liquidator-R1 by issuing a Cheque in Dirhams for a value equivalent to ₹23.60 crores. R1 encashed the Demand Drafts given by R2. Cheques issued by PEIC in favour of Appellant dishonoured. As EMD was duly paid by R2, direction issued to R2 for depositing entire sale consideration. Appellant on other hand filed Complaint with relation to dishonour of Cheque and also claimed ₹23.60 crores from R1. Appellant got himself impleaded before High Court. Court at Abu Dhabi issued an International Warrant of Arrest against Directors of PEIC for crime of dishonour of Cheques. As R2 failed to deposit the sale consideration within the due time, EMD paid was forfeited; Appellant was directed to work out remedy before Competent Court dealing with Company Petition. Appellant filed Application before Company Court seeking refund of ₹23.60, deposited by R2. Complaint against R2 and PEIC on allegation of cheating and conspiracy also filed by Appellant. R2's Application for purchase of property for a sum of ₹100 crores was dismissed by Company Court and the forfeited sums were directed to be paid to the Workman and Secured Creditor. Said order has been challenged in instant O.S.A.7 of 2010. Division Bench in another Appeal preferred by R2, issued direction for conducting a fresh Auction. Fresh Auction so conducted was unsuccessful. ARCIL pleaded that assets should be sold to R2 as their offer was higher. Offer of R2 to purchase the property for ₹101 crore accepted by Company Court. Company Court dismissed Application filed by Appellant seeking refund of money and Application seeking direction to Police to investigate on their Complaint. Aggrieved, instant Appeals have been preferred by Applicant in those Applications.

Held : Insofar as Section 58 of the Negotiable Instruments Act is concerned, learned Senior Counsel for the Appellant has contended that since the document is to be treated as an inland document and once a fraud has been played and an instrument has been obtained, the person, who has so obtained will have no valid title and hence, he cannot pass on better title, whereas, the learned Counsel for the First Respondent has countered the said contention that the last part of Section 58 protects the Official Liquidator as he is a holder in due course. [Para 23]

For better appreciation, it is useful to look into Section 58 of the N.I. Act, which reads as follows:

“58. *Instrument obtained by unlawful means or for unlawful consideration.*— When a Negotiable Instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.”

